

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

\* \* \*

UNITED STATES OF AMERICA,

Plaintiff,

v.

RICHARD L. HOUAR,

Defendant.

2:03-cr-00312-LRL

**ORDER**

Before the court is defendant's Motion for Order of Discharge of Fine and Avoid any Lien (#14), the government's Answer (#18), and defendant's Reply (#19); and the government's Motion to Strike Defendant's Reply or, in the Alternative, Motion for Leave to File Surreply (#23), defendant's Opposition to Motion to Strike Defendant's Reply, and the government's Reply (#27).

What is most striking about defendant's Motion is the absence of a tenable legal theory to support it. Exhibit E of the Motion makes a vague reference to an accord and satisfaction, which the defendant apparently believes has converted a criminal fine into a "civil" matter.

While a criminal fine may be collected using policies and procedures used for the enforcement of a civil judgment, the fine itself remains a criminal penalty. Moreover, accord and satisfaction requires that a good faith dispute regarding the amount owed must exist between the parties for its principles to apply. *U.S. for the Use of Las Vegas Bldg. Materials, Inc. v. Bernadot*, 719 F. Supp. 936, 938–39 (D. Nev. 1989) (citations omitted). The undersigned ordered a fine of \$5,000 and a penalty assessment of \$10. There is no dispute as to the amount owed. Nor was there independent consideration on which to form a new contract. Thus the fine was not terminated by accord and satisfaction. Finally, an accord and satisfaction, like any contract, can be set aside, in whole or in part,

1 for such reasons as mutual mistake, supervening illegality, or frustration of purpose. *See* Restatement  
2 (Second) of Contracts §§ 152, 264, 265.

3 The defendant's Reply, as the government points out, improperly argues new legal  
4 theories—none of which is applicable to the case at hand. Accordingly,

5 IT IS ORDERED that defendant's Motion for Order of Discharge of Fine and Avoid any Lien  
6 (#14) is DENIED.

7 IT IS FURTHER ORDERED that Richard L. Houar shall pay the fine balance in the amount of  
8 \$4,962.00 (\$5000.00 minus the \$38.00 garnished from his social security account) not later than January  
9 19, 2007. The payment shall be made payable to Clerk, U.S. District Court, and mailed to:

10 Clerk, U.S. District Court  
11 333 Las Vegas Blvd. South  
Room 1334  
12 Las Vegas, NV 89101

13 IT IS FURTHER ORDERED that upon payment of the fine the defendant's social security  
14 benefits shall cease to be garnished.

15 IT IS FURTHER ORDERED that the government's Motion to Strike Defendant's Reply or, in  
16 the Alternative, Motion for Leave to File Surreply (#23) is GRANTED. The court considered the  
17 government's Surreply.

18 DATED this 4<sup>th</sup> day of January, 2007.

19 

20  
21 **LAWRENCE R. LEAVITT**  
**UNITED STATES MAGISTRATE JUDGE**